

IN THE SUPREME COURT OF THE STATE OF DELAWARE

KEVIN L. KING, JR., ¹	§	
	§	No. 66, 2011
Respondent Below,	§	
Appellant,	§	Court Below: Family Court of
	§	the State of Delaware, in and for
v.	§	Kent County
	§	
TINA A. ROBERTS and	§	Petition No. 09-19105
M. ALAN ROBERTS,	§	File No. 09-06-3TK
	§	
Petitioners Below,	§	
Appellees.	§	

Submitted: May 25, 2011

Decided: June 14, 2011

Before **HOLLAND, BERGER**, and **JACOBS**, Justices.

ORDER

This 14th day of June 2011, upon consideration of the briefs of the parties and the record in this case, it appears to the Court that:

1. Kevin L. King, Jr. (“King” or “Father”), the respondent-below appellant, appeals from a Family Court order terminating his parental rights to Shannon, his biological minor child, and granting custody of Shannon to petitioners-below appellees, Tina and Alan Roberts (“the Roberts”). On appeal, King claims that there was insufficient evidence to support the Family Court’s conclusion that the

¹ The Court, *sua sponte*, has assigned pseudonyms to all parties pursuant to Supreme Court Rule 7(d).

statutory grounds for terminating his parental rights had been established.² We find no error and affirm.

2. King is Shannon's biological father. On November 10, 2005, the Division of Family Services ("DFS") placed Shannon with Father and his mother (Shannon's paternal grandmother). That occurred after DFS found Shannon in a motel room with her biological mother ("Mother"), maternal grandmother ("Maternal Grandmother"), and one of Maternal Grandmother's previous husbands, who was a registered sex offender. Shannon was approximately four months old at the time. Less than a year later, on August 22, 2006, the Family Court awarded sole guardianship of Shannon to her paternal grandmother, Rose Michaels, because Father was unable to provide adequate care for Shannon.

3. During the spring of 2007, the Roberts, while visiting Mr. Roberts' uncle, who lived with Rose, found Shannon living in unsuitable conditions.³ The Roberts reported that during one visit they saw Shannon sitting in a high chair wearing clothes that were soaked in urine. Rose and Mr. Roberts' uncle both smoked heavily around Shannon, and there were morphine pills on a table within Shannon's reach. After seeing Shannon "filthy" at another visit, the Roberts asked Rose if she wanted the couple to take Shannon home and care for her. Rose

² See 13 Del. C. § 1103(a)(5)(b).

³ The Roberts are not related, either biologically or by marriage, to Shannon or her biological parents.

agreed, admitting that she was “not in the best of health” and had concerns about what would happen to Shannon in the event that she (Rose) passed away. Shannon has been living with the Roberts since March 8, 2007.

4. At DFS’s encouragement, the Roberts petitioned for guardianship of Shannon, which the Family Court granted on August 6, 2007.⁴ The Family Court also awarded Shannon’s biological parents one-on-one visitation rights, but Father never exercised that right, nor did he take any interest in his daughter.⁵ On June 10, 2008, after conducting a hearing, the Family Court granted the Roberts legal guardianship of Shannon, finding that she would be dependent if left in either Mother’s or Father’s care.⁶ Despite having received proper notice, Father did not appear at that hearing.⁷

⁴ Temporary Guardianship & Appointment of Counsel Order (Del. Fam. Ct. Aug. 6, 2007).

⁵ Shannon’s biological mother exercised her visitation rights and met with Shannon every other Sunday. Guardianship and Visitation Order at 1-2 (Del. Fam. Ct. June 10, 2008).

⁶ *Id.* at 2. Regarding Mother, the Family Court determined that Mother was unable to provide for Shannon, because Mother had low mental capabilities, had not been employed for at least a year, had failed to pay child support for Shannon, and was living with, and would likely continue to live with, Maternal Grandmother and Maternal Grandmother’s current husband, who was a convicted rapist. Maternal Grandmother also had a history of domestic violence and criminal convictions, had been married to at least three different sex offenders, and had her parental rights to six of her nine children previously terminated. *Id.* at 3-4.

⁷ The Family Court had also appointed Father an attorney at the August 6, 2007 guardianship petition hearing, but court-appointed counsel withdrew after Father repeatedly failed to contact him.

5. The Family Court noted that although Father was employed as a cook at a fast-food restaurant, he had no driver's license or car, was living with his mother and paying minimal rent, and had a history of domestic violence, disorderly conduct, and mental illness.⁸ Also, Father had never visited his daughter despite being offered one-on-one visitation every other week, nor had he appeared to take any interest in Shannon.⁹ At the request of the Roberts, the Family Court reduced Father's visitation rights to be "under such terms and conditions as required by the [Roberts]."¹⁰

6. Unlike Father, who never exercised his visitation rights, Mother visited with Shannon every other week. Mother's visits continued until March 19, 2009. At that point, the Family Court granted the Roberts' emergency petition to stay Mother's visitation rights, because Shannon began exhibiting signs of agitation, uncontrollable behavior, and would wet and defecate herself after her visits with Mother.¹¹ The March 19, 2009 order also required Mother and Father to undergo

⁸ Guardianship and Visitation Order at 2.

⁹ *Id.*

¹⁰ *Id.*

¹¹ See Pet. To Stay Visitation & Order Psychological Evaluation Order (Del. Fam. Ct. Mar. 19, 2009), *see also* Termination of Parental Rights Order at 2 & n.1 (Del. Fam. Ct. Jan. 11, 2011).

psychological evaluations and cooperate with doctors and other health-care providers to help alleviate Shannon's symptoms.¹²

7. On June 9, 2009, the Roberts petitioned the Family Court to terminate the parents' biological parental rights and formally adopt Shannon. The Family Court conducted a hearing on December 13, 2010, at which both Mother and Father were represented by court-appointed counsel. After hearing testimony from Mother, Father, Rose Michaels (Shannon's paternal grandmother), the Roberts, and Ms. Christina Conway (a social worker), the Family Court found that both Mother and Father had failed to plan for Shannon's physical needs or mental and emotional health and development, and that there was "little likelihood that either [of them] will be able to do so in the near future."¹³

8. The Family Court found that Father had been unemployed since January 2009; had not been able to secure new employment; had no means of transportation and no driver's license; was living with his uncle, aunt, niece, nephew, and his (Father's) fiancé; was unable to secure his own housing arrangements, and would need to rely on his family to support and care for Shannon if she were returned to his care.¹⁴ Although Father said that he "loved his

¹² Pet. To Stay Visitation & Order Psychological Evaluation Order.

¹³ Termination of Parental Rights Order at 11.

¹⁴ *Id.* at 10-11.

daughter to death and wants her back,” he admitted that he had not seen Shannon for 3½ years, had never taken advantage of the court-offered visitation, had never contacted the Roberts to check on Shannon, and had never petitioned the court to obtain custody of Shannon.¹⁵ Father explained that initially he did not visit Shannon because of his work schedule, but offered no reason for why he did not attempt to visit her after he became unemployed in January 2009. Consequently, Father had no bond with Shannon and had not demonstrated that he could care for her emotional and mental well-being. The Family Court found that “Father’s situation has not changed in 3½ years and it is unlikely that circumstances will change such that Father will have the ability to care for [Shannon] in the near future.”¹⁶

9. The court also found it troublesome that Father made no effort to comply with the March 19, 2009 court-ordered psychological evaluation until three months before the termination of parental rights hearing date (December 13, 2010). Father testified that he contacted Dr. Wilson, the mental health doctor, in September 2010, but was unable to pay for the evaluation. Father did not, however, file a Motion for Expenditure of Funds to have the psychological evaluation until November 5, 2010—two months after he contacted Dr. Wilson and one month

¹⁵ *Id.* at 3-4, 11.

¹⁶ *Id.* at 11.

before the December 13th hearing date.¹⁷ When questioned, Father could not explain why he waited over a year and a half to contact Dr. Wilson.¹⁸

10. Based on that testimony, the Family Court determined that the statutory requirements for termination of parental rights under 13 *Del. C.* § 1103(a)(5)(b) had been satisfied, because Shannon had been living with the Roberts since March 2007¹⁹ and neither Mother nor Father were capable of discharging their parental responsibilities and would be unlikely to do so in the near future.²⁰ The court then weighed the statutory factors enumerated in 13 *Del. C.* § 722(a) and found that it was in Shannon's best interests for Mother's and Father's parental rights to be terminated and for Shannon to remain with the Roberts.²¹ Father appeals from those rulings.²²

¹⁷ See *id.* at 5. The Family Court denied Father's Motion for Funds. Order (Del. Fam. Ct. Nov. 9, 2010).

¹⁸ Termination of Parental Rights Order at 5.

¹⁹ See 13 *Del. C.* § 1103(a)(5)(b)(1) (requiring that the minor child be residing with a stepparent, guardian, permanent guardian, or blood relative for at least one year).

²⁰ See *id.* at subsection (b)(2). Mother testified that she did not have the ability to meet Shannon's physical needs, because she could not provide a home for her daughter. The Family Court also found that Mother's interactions with Shannon indicated that Mother did not know how to properly care for a child, and had made no attempts to plan for Shannon's physical, emotional, or mental care. Termination of Parental Rights Order at 9-10.

²¹ Termination of Parental Rights Order at 12-15.

²² Mother does not appeal the Family Court's termination of her parental rights to Shannon.

11. On appeal, Father claims that the Family Court erred in terminating his parental rights to Shannon, because the evidence was insufficient to support that court's determination that Father was incapable of discharging his parental responsibilities and would unlikely be able to do so in the near future. Father argues that the Family Court improperly relied upon his failure to obtain a psychological evaluation as evidence of his inability to discharge his parental responsibilities, because the court denied his motion for funds to pay for that evaluation. Father acknowledges that he did not appeal the Family Court's denial of his motion for funds, nor did he reference the court's denial of his motion at the December 13, 2010 hearing. Even so, Father argues that the interests of justice exception of Supreme Court Rule 8 should apply, because he was unaware that the Family Court would rely on his failure to obtain a psychological evaluation as a reason for terminating his parental rights to Shannon.²³

12. On an appeal from a judgment of the Family Court, this Court's standard and scope of review extends to a review of the facts and the law, and also to a review of the inferences and deductions made by the trial judge.²⁴ Questions

²³ See DEL. SUP. CT. R. 8 ("Only questions fairly presented to the trial court may be presented for review; provided, however, that when the interests of justice so require, the Court may consider and determine any question not so presented.").

²⁴ *Solis v. Tea*, 468 A.2d 1276, 1279 (Del. 1983).

of law are reviewed *de novo*.²⁵ Where the trial court has correctly applied the law, we review only for an abuse of discretion.²⁶ We will not disturb findings of fact unless those findings are “clearly wrong.”²⁷ Nor will we substitute our own opinion for the inferences and deductions made by the trial court where those inferences are supported by the record and are the product of an orderly and logical reasoning process.²⁸

13. Before terminating an individual’s parental rights, the Family Court must make two separate determinations.²⁹ First, the court must find a statutory basis for termination under 13 *Del. C.* § 1103.³⁰ Next, the court must find that termination of parental rights is in the best interests of the child in light of the eight statutory factors enumerated in 13 *Del. C.* § 722(a).³¹ Both determinations require proof by clear and convincing evidence.³² Father challenges only the Family

²⁵ *Forrester v. Forrester*, 953 A.2d 175, 179 (Del. 2008).

²⁶ *Jones v. Lang*, 591 A.2d 185, 186 (Del. 1991).

²⁷ *Forrester*, 953 A.2d at 179.

²⁸ *Jones*, 591 A.2d at 187.

²⁹ *Brown v. Div. of Family Servs.*, 14 A.3d 507, 509 (Del. 2011).

³⁰ *Id.*

³¹ *Id.*

³² *Short v. Dept. of Servs. For Children, Youth & Their Fam.*, 981 A.2d 1162, 1165 (Del. 2009).

Court's first determination, claiming that there was no statutory basis for terminating his parental rights. We review that claim *de novo*.³³

14. Under Section 1103(a)(5)(b), grounds for the termination of parental rights exist where: (i) the parent has failed to plan adequately for the child's physical needs, or mental and emotional health and development; (ii) the child has been residing with a stepparent, guardian, permanent guardian or blood relative for at least a year; and (iii) the parent is incapable of discharging his or her parental responsibilities and is unlikely to be able to do so in the near future.³⁴ It is undisputed that the first two grounds have been established. Father does not contest that he has failed to plan adequately for Shannon's physical, mental, and emotional needs, or that Shannon has lived with the Roberts since March 2007. Thus, the only issue is whether the Family Court erred in concluding that the third statutory ground had also been established.

15. Father's claim of error cannot succeed. Even if we were to disregard Father's failure to comply with the court-ordered psychological evaluation, the record contains evidence sufficient to support the Family Court's conclusion that Father is unable to discharge his parental responsibilities presently and will be unlikely to do so in the near future. Father was unable to provide Shannon

³³ *Id.* (noting that the question of whether statutory grounds to terminate parental rights have been established is "a legal issue that we review *de novo*.").

³⁴ 13 *Del. C.* § 1103(a)(5)(b)(1)-(2).

adequate care while she was in his custody for nine months. As a result, Shannon was placed under Rose Michaels' guardianship in August 2006. In August 2007, a DFS social worker reported that Father was "minimally able to care for himself" and "has no clear understanding of [Shannon's] needs."³⁵ The DFS social worker also observed that "Father thinks [that] having custody of a child means simply that a child lives in your home, rather than knowing about the child's needs."³⁶

16. After Shannon was removed from his care in August 2006, Father's circumstances never improved, and if anything, worsened when he became unemployed in January 2009. Father has not been able to secure another job and cannot provide for Shannon financially. He still resides in the same three-bedroom mobile home with at least five other relatives as he did in August 2006, and is unable to secure his own housing in which to raise Shannon. Father does not plan to obtain a driver's license and car, and intends to rely on his relatives to take Shannon to school.³⁷ These undisputed facts alone sufficiently support the Family Court's determination that "Father has not made any effort in the time that

³⁵ Temporary Guardianship & Appointment of Counsel Order at 2 (Del. Fam. Ct. Aug. 6, 2007).

³⁶ *Id.*

³⁷ Termination of Parental Rights Order at 4 (Del. Fam. Ct. Jan. 11, 2011).

[Shannon] has been out of his care to change his living situation such that he would be able to care for [her].”³⁸

17. The record further shows that Father has not shown any interest in the court proceedings. At the August 6, 2007 hearing in which the Family Court awarded temporary legal guardianship of Shannon to the Roberts, Father indicated that he did not agree with that decision, after which the court appointed an attorney for Father. Father, however, failed to remain in contact with his court-appointed attorney, resulting in the attorney’s withdrawal in February 2008. Father also failed to appear at the final guardianship hearing on June 10, 2008, despite having received proper notice. Apart from Father’s failure to comply with the Family Court’s March 19, 2009 order to cooperate with Dr. Wilson, the record shows that Father did not even attempt to contact Dr. Wilson until nearly one and a half years after the order was issued, and that Father had no explanation for that delay.

18. Most important, the record overwhelmingly supports the Family Court’s conclusion that Father did nothing to provide for Shannon’s emotional and mental health. Despite Father’s claim that he “loves his daughter to death and wants her back,” Father never exercised his court-offered visitation rights or contacted the Roberts to monitor Shannon’s welfare. Although Father claimed that he was unable to visit Shannon because of his work schedule, he never attempted to visit

³⁸ *Id.* at 11.

Shannon after he became unemployed in January 2009. At this point, Father had not seen or been in contact with Shannon for over 3½ years, or made any plans to develop a bond with his daughter.

19. To summarize, the undisputed facts show that Father has failed to discharge his parental responsibilities for the last 3½ years, and that his behavior demonstrates a repeated pattern of indifference to developing an emotional bond with his daughter and caring for her well-being. The Family Court correctly determined that Father was presently incapable of discharging his parental responsibilities and would be unlikely to do so in the near future.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Family Court is AFFIRMED.

BY THE COURT:

/s/ Jack B. Jacobs
Justice